IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 12TH NOVEMBER 2007 / 21ST KARTHIKA 1929

RP.No. 952 of 2007(T)

AGAINST THE JUDGEMENT/ORDER IN OP.37334/2002

.....

REVIEW PETITIONER/RESPONDENT/RESPONDENT:

---

1. THE ASSISTANT EXCISE COMMISSIONER,
   MALAPPURAM.

2. THE ADDITIONAL EXCISE COMMISSIONER,
   THIRUVANANTHAPURAM.

3. THE COMMISSIONER OF EXCISE,
   KERALA, THIRUVANANTHAPURAM.

4. STATE OF KERALA,
   REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT,
   GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

BY ADV. SHRI. V.TEKCHAND, GOVERNMENT PLEADER

RESPONDENTS/ PETITIONER/PETITIONER:

C.U. ABRAHAM, S/O. ULAHANNAN,
CHENNATTUKUZHIYIL HOUSE, PIRAVOM.

BY ADV. SHRI. P.V.SURENDRANATH

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 12/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR, J.

R.P.No. 952 of 2007
in
I.A.No. 10342 of 2007
in
O.P. No. 37334 of 2002

Dated, this the 12th day of November, 2007

O R D E R

Heard learned Government Pleader for the review petitioners and learned counsel appearing for the respondent.

2. The respondent was granted conditional relief in the judgment on payment of Rs. 50,000/- on or before 31/03/2007. However, on application, time for payment was extended till 07/08/2007 vide order dated 31/07/2007. However, when the respondent offered payment within the extended time, review petitioners returned the demand draft stating that review petition is filed against the order granting extension of time for payment.

3. It is now stated in the review petition that the Bank guarantee was encashed and full amount was recovered by the review petitioner. Obviously, extension of time was granted because both the parties did not inform the Court about encashment of the Bank guarantee. After encashment of the Bank guarantee by the review petitioners, no amount was due from the respondent. Therefore, there is no scope for granting extension of

time for payment in terms of judgment. The review petition, therefore, has to be necessarily allowed.

4. However, learned counsel for respondent stated that respondent was not given an opportunity to surrender the vehicle before encashment of Bank guarantee and therefore, action of review petitioners is unjustified. I do not think, there is any scope for considering this prayer of respondent in this review petition. Therefore, the review petition is allowed, vacating the interim order dated 31/07/2007 granting extension of time for payment, but leaving freedom to respondent to seek appropriate relief consequent upon encashment of the Bank guarantee. However, I make it clear that since value is recovered petitioner is entitled to retain the confiscated vehicle. Respondents should treat confiscation as notional only.

(C.N.RAMACHANDRAN NAIR, JUDGE.)

jg